

## Wage and Hour Division, Labor

## § 503.24

willful failures to meet any of the conditions of the *Application for Temporary Employment Certification* and *H-2B Petition* that involve harm to U.S. workers. Other factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, or the regulations in this part;

(2) The number of H-2B workers, workers in corresponding employment, or improperly rejected U.S. applicants who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, and the regulations in this part;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

### § 503.24 Debarment.

(a) *Debarment of an employer.* The Administrator, OFLC may not issue future labor certifications under 20 CFR part 655, Subpart A to an employer or any successor in interest to that employer, subject to the time limits set forth in paragraph (c) of this section, if the Administrator, WHD finds that the employer committed a violation that meets the standards of § 503.19. Where these standards are met, debarable violations would include but not be limited to one or more acts of commission or omission which involve:

(1) Failure to pay or provide the required wages, benefits, or working conditions to the employer's H-2B workers and/or workers in corresponding employment;

(2) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(3) Failure to comply with the employer's obligations to recruit U.S. workers;

(4) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(5) Failure to comply with one or more sanctions or remedies imposed by the Administrator, WHD for violation(s) of obligations under the job order or other H-2B obligations, or with one or more decisions or orders of the Secretary or a court under 20 CFR part 655, Subpart A or this part;

(6) Impeding an investigation of an employer under this part;

(7) Employing an H-2B worker outside the area of intended employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(8) A violation of the requirements of § 503.16(o) or (p);

(9) A violation of any of the provisions listed in § 503.16(r);

(10) Any other act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected;

(11) Fraud involving the *H-2B Registration*, *Application for Temporary Employment Certification*, or *H-2B Petition*; or

(12) A material misrepresentation of fact during the registration or application process.

(b) *Debarment of an agent or attorney.* If the Administrator, WHD finds, under this section, that an agent or attorney committed a violation as described in paragraph (a) of this section or participated in an employer's violation, the Administrator, OFLC may not issue future labor certifications to an employer represented by such agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Period of debarment.* Debarment under this subpart may not be for less than 1 year or more than 5 years from the date of the final agency decision.

(d) *Debarment procedure.* If the Administrator, WHD makes a determination to debar an employer, attorney, or agent, the Administrator, WHD will send the party a Notice of Debarment. The notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment and inform

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the party subject to the notice of its right to request a debarment hearing and the timeframe under which such rights must be exercised under § 503.43. If the party does not request a hearing within 30 calendar days of the date of the Notice of Debarment, the notice is the final agency action and the debarment will take effect at the end of the 30-day period. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal as provided in § 503.43(e).

(e) *Concurrent debarment jurisdiction.* OFLC and the WHD have concurrent jurisdiction debar under 20 CFR 655.73 or under this part. When considering debarment, OFLC and the WHD will coordinate their activities. A specific violation for which debarment is imposed will be cited in a single debarment proceeding. Copies of final debarment decisions will be forwarded to DHS and DOS promptly.

(f) *Debarment from other labor certification programs.* Upon debarment under this part or 20 CFR 655.73, the debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

## § 503.25 Failure to cooperate with investigators.

(a) No person will interfere or refuse to cooperate with any employee of the Secretary who is exercising or attempting to exercise the Department's investigative or enforcement authority under 8 U.S.C. 1184(c). Federal statutes prohibiting persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 114.

(b) Where an employer (or employer's agent or attorney) interferes or does not cooperate with an investigation concerning the employment of an H-2B worker or a worker in corresponding employment, or a U.S. worker who has been improperly rejected for employment or improperly laid off or displaced, WHD may make such information available to OFLC and may recommend that OFLC revoke the existing certification that is the basis for

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the employment of the H-2B workers giving rise to the investigation. In addition, WHD may take such action as appropriate where the failure to cooperate meets the standards in § 503.19, including initiating proceedings for the debarment of the employer from future certification for up to 5 years, and/or assessing civil money penalties against any person who has failed to cooperate with a WHD investigation. The taking of any one action will not bar the taking of any additional action.

## § 503.26 Civil money penalties—payment and collection.

Where a civil money penalty is assessed in a final order by the Administrator, WHD, by an ALJ, or by the ARB, the amount of the penalty must be received by the Administrator, WHD within 30 calendar days of the date of the final order. The person assessed the penalty will remit the amount ordered to the Administrator, WHD by certified check or by money order, made payable to the Wage and Hour Division, United States Department of Labor. The remittance will be delivered or mailed to the WHD Regional Office for the area in which the violations occurred.

## Subpart C—Administrative Proceedings

## § 503.40 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative appeal process that will be applied with respect to a determination to assess civil money penalties, to debar, to enforce provisions of the job order or obligations under 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, or the regulations in this part, or to the collection of monetary relief due as a result of any violation.

### PROCEDURES RELATED TO HEARING

## § 503.41 Administrator, WHD's determination.

(a) Whenever the Administrator, WHD decides to assess a civil money penalty, to debar, or to impose other appropriate administrative remedies, including for the recovery of monetary